



March 28, 2007

Mr. Scott Hansen  
Remedial Response Branch, Region 5  
U.S. EPA (SR-6J)  
77 West Jackson Blvd.  
Chicago, IL 60604

Mr. Jamie Dunn  
WDNR - Northwest Region Headquarters  
810 W. Maple St.  
Spooner, WI 54801

RE: Ashland Lakefront Site: CERCLA Docket No. V-W-04-C-764

Dear Messrs. Hansen and Dunn:

In follow-up to our conference call of March 23, 2007, this letter provides the perspective of Northern States Power Company a Wisconsin Corporation and a wholly owned subsidiary of Xcel Energy Inc., d/b/a/ Xcel Energy ("NSPW") on the permitting issues presented by a proposed aquatic confined disposal facility ("CDF"). In several places in the agency's March 15, 2007 Comments to Alternatives Screening Technical Memorandum, it is stated, "It is *assumed* that lake bed fill can not be completed without action of the State Legislature and Governor potentially making implementation difficult" (emphasis added). We request that the agencies clarify the legal basis for this comment so that we are better able to proceed with the alternatives screening, comparison and feasibility study portions of this project.

Our request for clarification is generated at least in part by our interpretation of the law and our disagreement with the comment. On that point, § 30.12(1)(a), Stats., prohibits the "[d]eposit [of] any material ... upon the bed of any navigable water" in the absence of a permit issued by WDNR or an authorization from the Wisconsin Legislature. But the statute clearly contemplates two methods by which an aquatic CDF (i.e., navigable water body bed fill) may be constructed: via individual or general permit pursuant to ch. 30 or via legislative authorization. The agency's comment suggests that only one method of approval is allowed, that being an act of the Legislature approved by the Governor. Indeed, statutory authorization for WDNR to permit such an engineered structure is provided by §§ 30.12(3) and 30.12(3m), Stats. In addition, § 30.20(1)(b) authorizes via general or individual permit the removal of material from the bed of any lake or navigable stream. Authorization to issue such general and individual permits is provided by §§ 30.20(1t) and (2), Stats., as well as ch. NR 347, Wis. Admin. Code.

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Additionally, one must consider that a proposed aquatic CDF at this site would be constructed "on-site" as defined in 40 C.F.R. § 300.400(e)(1). Given that the engineered CDF would be constructed on-site, then such activities are subject to the CERCLA on-site permit exemption and the permitting process becomes a process ARAR while the engineering design would be a substantive ARAR pursuant to § NR 347.04(1)(b), Wis. Admin. Code. *See* General Comment No. 4, USEPA March 15, 2007 Comments to Alternatives Screening Technical Memorandum; *see also* OSWER Directive 9355.7-03, USEPA February 19, 1992, re: "Permits and Permit 'Equivalency' Processes for CERCLA On-site Response Actions."

Given that there is statutory authority for the State to issue a permit for an aquatic CDF as cited above without the need for legislative action, and given that such permitting process is a process ARAR provided that the substantive ARAR of the facility design is met from a plan and specification approval standpoint, we are confused by the agency's comment that any lake bed fill can only occur via an action of the Wisconsin Legislature.

We would appreciate your clarification of this issue and ask you to consider the foregoing.

Sincerely,

A handwritten signature in black ink, appearing to read "Jerry C. Winslow". The signature is written in a cursive, flowing style.

Jerry C. Winslow  
Principal Environmental Engineer

cc: John Robinson, WDNR